

Title 463 WAC

ENERGY FACILITY SITE EVALUATION COUNCIL

(Formerly: Thermal Power Plant Evaluation Council)

Chapters

463-28	State preemption.
463-47	SEPA rules.
463-66	Amending, transferring, or terminating a site certification agreement.

Chapter 463-28 WAC STATE PREEMPTION

WAC

463-28-010	Purpose.
463-28-060	Adjudicative proceeding.
463-28-070	Certification—Conditions—State/local interests.
463-28-080	Preemption—Recommendation.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

463-28-030	Determination of noncompliance—Procedures. [Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-28-030, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-030, filed 6/23/78.] Repealed by 07-21-035, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040(1).
463-28-040	Inability to resolve noncompliance. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-040, filed 6/23/78.] Repealed by 07-21-035, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040(1).
463-28-050	Failure to request preemption. [Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-050, filed 6/23/78.] Repealed by 07-21-035, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040(1).

WAC 463-28-010 Purpose. This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt land use plans, zoning ordinances, or other development regulations for a site or portions of a site for an energy facility, or alternative energy facility.

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-28-010, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-28-010, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-010, filed 6/23/78.]

WAC 463-28-060 Adjudicative proceeding. (1) Should the council determine under WAC 463-26-110 a site or any portions of a site is inconsistent it will schedule an adjudicative proceeding under chapter 463-30 WAC to consider preemption.

(2) The proceeding for preemption may be combined or scheduled concurrent with the adjudicative proceeding held under RCW 80.50.090(3).

(3) The council shall determine whether to recommend to the governor that the state preempt the land use plans, zoning ordinances, or other development regulations for a site or portions of a site for the energy facility or alternative energy resource proposed by the applicant.

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-28-060, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040. 91-03-090, § 463-28-060, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). 83-08-031 (Order 83-2), § 463-28-060, filed 3/31/83; 78-07-036 (Order 78-3), § 463-28-060, filed 6/23/78.]

WAC 463-28-070 Certification—Conditions—State/local interests. If the council approves the request for preemption it shall include conditions in the draft certification agreement which consider state or local governmental or community interests affected by the construction or operation of the energy facility or alternative energy resource and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted pursuant to RCW 80.50.110(2).

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-28-070, filed 10/9/07, effective 11/9/07; 78-07-036 (Order 78-3), § 463-28-070, filed 6/23/78.]

WAC 463-28-080 Preemption—Recommendation. The council's determination on a request for preemption shall be part of its recommendation to the governor pursuant to RCW 80.50.100.

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-28-080, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040. 91-03-090, § 463-28-080, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-080, filed 6/23/78.]

Chapter 463-47 WAC SEPA RULES

WAC

463-47-060	Additional timing considerations.
463-47-090	EIS preparation.
463-47-110	Policies and procedures for conditioning or denying permits or other approvals.
463-47-140	Responsibilities of the council's responsible official.

WAC 463-47-060 Additional timing considerations. (1) The council will determine when it receives an application whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the council will request the applicant to complete an environmental checklist. A checklist is not needed if the council and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application. The applicant should also complete an environmental checklist if the council is unsure whether the proposal is exempt.

(2) The council may initiate an adjudicative proceeding required by RCW 80.50.090 prior to completion of the draft EIS.

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-47-060, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-47-060, filed 10/11/04, effective 11/11/04. Statutory

Authority: RCW 80.50.040, 91-03-090, § 463-47-060, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1), 84-19-031 (Order 84-2), § 463-47-060, filed 9/14/84.]

WAC 463-47-090 EIS preparation. (1) Preparation of draft and final EISs, SEISs, or addenda is the responsibility of the council. The responsible official shall be satisfied that these documents comply with these rules and chapter 197-11 WAC prior to issuance.

(2) The council has the following options for draft and final EISs, SEISs, or addenda preparation:

(a) The council prepares its own documents.
(b) The council's independent consultant prepares any or all of the documents under the supervision of the responsible official.

(c) The council requires the applicant to prepare the documents with oversight from the responsible official.

(3) If the council prepares its own draft and final EISs, SEISs, or addenda, or its independent consultant prepares them, the council can require an applicant to provide information that the council or independent consultant does not possess, including specific investigations.

(4) The applicant shall bear the expense of the draft and final EISs, SEISs, or addenda preparation, but the consultant will work directly for the council.

(5) Normally, the council will have the documents printed and distributed.

(6) Whenever someone other than the council prepares a draft or final EISs, SEISs, or addenda, the responsible official:

(a) May direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Shall initiate and coordinate scoping, ensuring that the individuals preparing the documents receive all substantive information submitted by any agency or person.

(c) Shall assist in obtaining information on file with other agencies that is needed by the persons preparing the document.

(d) Shall allow the person preparing the document access to council records relating to the document (under chapter 42.17 RCW—Public disclosure and public records law).

[Statutory Authority: RCW 80.50.040(1), 07-21-035, § 463-47-090, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040 (1) and (12), 04-21-013, § 463-47-090, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1), 92-09-013, § 463-47-090, filed 4/2/92, effective 5/3/92; 84-19-031 (Order 84-2), § 463-47-090, filed 9/14/84.]

WAC 463-47-110 Policies and procedures for conditioning or denying permits or other approvals. (1)(a) The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result from the council's decisions.

(b) The council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The council recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(d) The council shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

(2)(a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the council shall consider whether:

(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

(b) The council may:

(i) Condition the approval or recommendation for approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.

(ii) Reject or recommend rejection of the application if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.

(c) The procedures in WAC 197-11-660 must also be followed when conditioning, denying or recommending permits or rejecting applications.

[Statutory Authority: RCW 80.50.040(1), 07-21-035, § 463-47-110, filed 10/9/07, effective 11/9/07; 84-19-031 (Order 84-2), § 463-47-110, filed 9/14/84.]

WAC 463-47-140 Responsibilities of the council's responsible official. The EFSEC manager shall be responsible for the following:

(1) Coordinating activities to comply with SEPA and encouraging consistency in SEPA compliance.

(2) Providing information and guidance on SEPA and the SEPA rules to council, council staff, groups, and citizens.

(3) Reviewing SEPA documents falling under council interests and providing the department of ecology with comments.

(4) Maintaining the files for EISs, DNSs, and scoping notices, and related SEPA matters.

(5) Writing and/or coordinating EIS preparation, including scoping and the scoping notice, making sure to work with interested agencies.

(6) Publishing and distributing its SEPA rules and amending its SEPA rules, as necessary.

(7) Fulfilling the council's other general responsibilities under SEPA and the SEPA rules.

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-47-140, filed 10/9/07, effective 11/9/07; 84-19-031 (Order 84-2), § 463-47-140, filed 9/14/84.]

Chapter 463-66 WAC

AMENDING, TRANSFERRING, OR TERMINATING A SITE CERTIFICATION AGREEMENT

WAC

463-66-040

Amendment review.

WAC 463-66-040 Amendment review. In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

- (1) The intention of the original SCA;
- (2) Applicable laws and rules;
- (3) The public health, safety, and welfare; and
- (4) The provisions of chapter 463-72 WAC.

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-66-040, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, recodified as § 463-66-040, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-040, filed 11/19/87.]